



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 30, 2023

IN THE MATTER OF:

Appeal Board No. 628823

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive Mixed Earner Unemployment Compensation (MEUC). The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed December 11, 2021 (), the Administrative Law Judge sustained the initial determination.

The claimant applied to the Appeal Board, pursuant to Labor Law § 620 (3), for a reopening and reconsideration of the Judge's decision. The Board considered the arguments contained in the written statement submitted by the claimant. Due deliberation having been had, the Board has reopened and reconsidered the decision of the Administrative Law Judge.

Our review of the record reveals that the case should be remanded to hold a hearing. Further evidence is needed to render a fully informed decision on the issue of the claimant's eligibility for MEUC benefits.

Specifically, in light of the claimant's testimony that he filed an original claim for unemployment insurance in March of 2020, the Commissioner of Labor is directed to be represented at the remand hearing,

and shall present testimony and other evidence to establish whether the claimant filed an original claim for

unemployment benefits in 2020. Further, if such a claim is established, the Commissioner's representative shall be prepared to present the Commissioner's position on whether the claimant's 2020 claim or his 2021 claim should be used to determine his eligibility for MEUC benefits.

In addition, the Commissioner's representative shall be prepared to present testimony and other evidence to explain why the claimant's application information screen, received into evidence as Hearing Exhibit 1, indicates a claim date of May 13, 2021, when the claimant's application for MEUC benefits (in evidence as Hearing Exhibit 2) was completed on March 31, 2021; and the initial determination at issue was mailed on April 30, 2021, and reflects a claim effective date of January 4, 2021.

The claimant is directed to produce his complete 2019 and 2020 income tax returns, including the Schedule C forms filed with each return, to establish his net earnings from self-employment in each of those years.

All relevant documents produced by the parties shall be received into evidence after the appropriate confrontation and opportunity for objection.

The parties are placed on notice that failure to present the testimony and documentary evidence directed herein, may result in the hearing Judge or the Board taking an adverse inference against that party, and deciding that the evidence not produced would not have supported that party's position.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of the claimant's eligibility to receive MEUC benefits, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER